

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:ITA:BR05

PLR-128983-07

Date:

November 20, 2007

In Re:

Att'n:

LEGEND:

State A =
State Agency A =
Program M =
Crisis X =

Date N =
Amounts:

\$w =
\$x =
\$y =
\$z =

Dear

This letter responds to your authorized representatives' letter and submissions of June 18, 2007, and other correspondence and submissions, in which they requested on your (State Agency A's) behalf rulings regarding the proper federal tax treatment of certain payments you make to, for, or on behalf of State A homeowners under Program M, as more fully described below. Specifically, rulings were requested that the subject payments (1) are not includible in the gross incomes of the recipients for federal income tax purposes, and therefore (2) are not subject to information reporting under section 6041 of the Internal Revenue Code (the Code). We are pleased to address your concerns.

FACTS

The information submitted indicated that you, State Agency A, are an agency of the government of State A, created by the State A legislature. You are responsible for the administration of a large number of state laws, including those relating to insurance regulation, banking regulation, fire marshall and prevention activities, and the state treasury and state comptroller. Among other responsibilities, you are responsible for implementing and administering Program M, more fully described below.

The information submitted also indicates that State A is suffering an ongoing crisis, Crisis X, which is substantially and adversely affecting the public health, safety, and general welfare of State A homeowners. During 2006, the State A legislature, recognizing that the crisis is causing extreme hardship to State A homeowners enacted into law Program M. Program M is intended to address and ameliorate Crisis X and its adverse affects on State A homeowners. Under Program M, the state has allocated approximately \$w to be spent from its general revenues to address the underlying causes of, and eliminate, Crisis X. The program is authorized through Date N.

Amounts paid to, for, or on behalf of State A homeowners voluntarily participating in Program M consist primarily of three benefits, or components: a) free home inspections designed to identify factors contributing to Crisis X and to make recommendations for their cure ("Free Inspections"); b) grants of up to \$y to homeowners to implement recommendations resulting from the home inspections ("Improvement Grants"); and c) interest payments on private loans of up to \$y, for up to 3 years, on loans procured by homeowners to address inspection deficiencies and recommendations ("Interest Payments"). In general, the free inspection benefit is available statewide to owners of site-built, single family homes. Grants are limited to one-half the actual cost of recommended corrections, not to exceed \$y. The interest-payment benefit may not be combined with a program grant benefit. Program benefits are principally directed at moderate income households and below located in areas identified as contributing to Crisis X; grants and interest payments are limited to residences valued for insurance purposes at less than \$x.

LAW & ANALYSIS

Gross Income Defined

Section 61 of the Code provides generally that, except as otherwise provided by law, gross income includes all income from whatever source derived. The concept of gross income encompasses accessions to wealth, clearly realized, over which taxpayers have complete dominion. *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426 (1955); 1955-1 C.B. 207.

Although section 61 provides for broad includibility in gross income, the Internal Revenue Service has consistently held that payments made under legislatively provided social benefit programs for the promotion of the general welfare, that do not represent compensation for services, are not includible in a recipient's gross income.

Rev. Rul. 74-205, 1974-1 C.B. 20, provides that replacement housing payments received by individuals under the Housing and Urban Development Act of 1968 are not includible in gross income under the general welfare exclusion. The payments made under the Act help individuals and families displaced from their homes, businesses or farms by Federal or federally assisted programs in acquiring decent, safe, and sanitary dwellings of modest standards sufficient in size to accommodate the displaced owners.

Rev. Rul. 98-19, 1998-1 C.B. 840 and Rev. Rul. 76-373, 1976-2 C.B. 16 concern the taxation of relocation payments under Title I of the Housing and Community Development Act of 1974 ("1974 Act"), which has the primary objective of developing viable urban communities by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income. Rev. Rul. 98-19 holds that relocation payments authorized by the 1974 Act and made by a local government to individuals moving from flood-damaged areas to other residences, are in the nature of 'general welfare' and therefore are not includible in gross income. Similarly, Rev. Rul. 76-373 holds that relocation payments (e.g., for reasonable expenses in moving a person's family or personal property made to individuals displaced by activities assisted under Title I of the 1974 Act are in the nature of 'general welfare' and therefore are not includible in gross income. See *also* Rev. Rul. 76-395, 1976-2 C.B. 16,

State A has established Program M to eliminate Crisis X. Program payments made to, for, or on behalf of participating homeowners are critically linked and commensurate with the specific problems presented, do not exceed necessary corrective action, and are principally directed at moderate-income households and below located in areas contributing to Crisis X. We conclude therefore that the value of the described Free Inspections, Improvement Grants, and Interest Payments made to, for, or on behalf of homeowners participating in Program M, are in the nature of general welfare and, as such, are not includible in the gross incomes of the recipients.

Information Reporting Requirements

You also inquired about possible information reporting requirements for payments and benefits made to, for, or on behalf of the homeowners participating in Program M.

Section 6041 of the Code provides that all persons engaged in a trade or business and making payment in the course of such trade or business to another person, of rent, salaries, wages, premiums, annuities, compensations, remunerations,

emoluments, or other fixed or determinable gains, profits, and income (other than payments to which section 6042(a)(1), 6044(a)(1), 6047(e)[d], 6049(a), or 6050N(a) applies, and other than payments with respect to which a statement is required under the authority of section 6042(a)(2), 6044(a)(2), or 6045), of \$600 or more in any taxable year, or, in the case of such payments made by the United States, the officers or employees of the United States having information as to such payments and required to make such returns in regard thereto by the regulations hereinafter provided for, shall render a true and accurate return to the Secretary, under such regulations and in such form and manner and to such extent as may be prescribed by the Secretary, setting forth the amount of such gains, profits, and income, and the name and address of the recipient of such payment.

Section 1.6041-1(a)(1)(i) of the Treasury Regulations (regulations) provides that, except as otherwise provided in sections 1.6041-3 (payments for which no return of information is required under section 6041) and 1.6041-4 (foreign-related items and other exceptions), every person engaged in a trade or business shall make an information return for each calendar year with respect to payments it makes during the calendar year in the course of its trade or business to another person of fixed or determinable income described in paragraph (a)(1)(i)(A) (salaries, wages, commissions, fees, and other forms of compensation for services rendered aggregating \$600 or more) or (B) (interest (including original issue discount), rents, royalties, annuities, pensions, and other gains, profits, and income aggregating \$600 or more) of this section.

Section 1.6041-1(a)(2) of the regulations provides, in pertinent part, that the return required by subparagraph (1) of this paragraph shall be made on Forms 1096 and 1099.

Section 1.6041-1(b) of the regulations provides, in pertinent part, that the term “all persons engaged in a trade or business”, as used in section 6041(a), includes not only those so engaged for gain or profit, but also organizations the activities of which are not for the purpose of gain or profit. Thus, the term includes the organizations referred to in sections 401(a), 501(c), 501(d), and 521 and in paragraph (i) of this section.

The word “income” as used in section 6041 is not defined by statute or regulation; however, its appearance in the phrase “fixed or determinable gains, profits, and income” indicates that what is referred to is “gross income,” and not the gross amount paid. Thus, section 6041 requires you to report only those payments in excess of \$600 includible in a recipient’s gross income.

In this case, the value of payments and other benefits made to, for, or on behalf of homeowners participating in State A’s Program M are in the nature of general welfare and are not income to the recipients under section 61. As a result, you do not have to report the payments under section 6041.

CONCLUSIONS

Based on the facts and information submitted and the representations made, the following rulings are issued respecting the payments you, State Agency A, make to, for, or on behalf of homeowners participating in Program M, as more fully described above:

(1) such payments are not income to the participating homeowners under section 61 of the Code; and

(2) you are not required to report such payments on Forms 1096 or 1099.

Final regulations pertaining to one or more of the issues addressed in this ruling have not yet been adopted. Therefore, this ruling may be modified or revoked by adoption of final regulations, to the extent the regulations are inconsistent with any conclusions in this ruling. See section 11.04 of Rev. Proc. 2007-1, 2007-1 I.R.B. 1, 49. However, when the criteria in section 11.06 of Rev. Proc. 2007-1 are satisfied, a ruling is not revoked or modified retroactively, except in rare or unusual circumstances.

This letter ruling is based on facts and representations provided by State Agency A and its authorized representatives, and is limited to the matters specifically addressed. No opinion is expressed as to the tax treatment of the transactions considered herein under the provisions of any other sections of the Code or regulations which may be applicable thereto, or the tax treatment of any conditions existing at the time of, or effects resulting from, such transactions which are not specifically addressed herein.

Because it could help resolve federal tax issues, a copy of this letter should be maintained with your permanent records. You might also wish to advise homeowners participating in Program M that the value of benefits they receive under the program has been determined to be excludible from their gross incomes for federal income tax purposes.

Pursuant to a power of attorney on file with this office, copies of this letter ruling are being sent to your authorized representatives.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited as precedent.

Sincerely yours,

/s/ William A. Jackson

William A. Jackson
Chief, Branch 5
Associate Chief Counsel
(Income Tax & Accounting)

Enclosures:

Copy of this letter

Copy for section 6110 purpose s